

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

LANCE EDWARD GLOOR,

No. 3:22-cv-1190-YY

Petitioner,

ORDER

v.

ISRAEL JACQUEZ,

Respondent.

HERNÁNDEZ, District Judge:

Magistrate Judge Youlee Yim You issued a Findings and Recommendation on March 22, 2024, in which she recommends that this Court deny the Petition for Writ of Habeas Corpus, enter a judgment of dismissal, and deny a certificate of appealability. F&R, ECF 48. The matter is now before the Court pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and [Federal Rule of Civil Procedure 72\(b\)](#).

Petitioner filed timely objections to the Magistrate Judge's Findings and Recommendation. Pet. Obj., ECF 51. When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(en banc).

Petitioner does not object to Judge You's recommendation that the Petition for Habeas Corpus be denied as moot and this matter dismissed based on Petitioner's release from BOP custody. Petitioner, however, objects to Judge You's alternative conclusion that Petitioner would not have succeeded on his claims. The Court agrees with Judge You's finding that this matter is moot and adopts her recommendation to deny the Petition on that grounds, therefore, the Court declines to adopt Judge You's alternative finding regarding Petitioner's success on the merits.

Petitioner also objects to Judge You's recommendation to deny a certificate of appealability on the basis that the Ninth Circuit has held that "[t]he plain language of [28 U.S.C.] § 2253(c)(1) does not require a petitioner to obtain a [certificate of appealability] in order to appeal the denial of a § 2241 petition" absent circumstances not present here. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008)(holding petitioner was not required to obtain a certificate of appealability to appeal the denial of his § 2241 petition because it was not a "disguised" § 2255 petition). *See also Wilson v. Belleque*, 554 F.3d 816, 825 (9th Cir. 2009) (finding that only "state prisoner[s] who [are] proceeding under § 2241 must obtain a COA under § 2253(c)(1)(A) in order to challenge process issued by a state court). Petitioner's § 2241 petition is not a disguised § 2255 petition and Petitioner is not a state prisoner challenging a process issued by a state court. Petitioner, therefore, need not obtain a certificate of appealability to


appeal the denial of his § 2241 petition. Accordingly, the Court declines to adopt that portion of Judge You's Findings and Recommendation.

**CONCLUSION**

The Court ADOPTS IN PART Magistrate Judge You's Findings and Recommendation, ECF 48. Therefore, denies the Petition for Writ of Habeas Corpus and dismisses this matter.

IT IS SO ORDERED.

DATED: May 5, 2024.

  
MARCO A. HERNANDEZ  
United States District Judge